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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,134	08/29/2005	Steven Jones	85084-402	3937

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EXAMINER

HURT, SHARON L.

ART UNIT	PAPER NUMBER
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1648

MAIL DATE	DELIVERY MODE
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05/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,134

Applicant(s)

JONES ET AL.

Examiner

Sharon Hurt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 13-15, 17, 19-23, 25 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 13-15, 17, 19-23, 25 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendments to the claims filed March 13, 2007 has been entered. Claims 1-3, 5, 13-15, 17, 21-23 and 25 are currently amended. Claims 29-31 are newly added claims.

Status of the Claims

Claims 1-3, 5, 13-15, 17, 19-23, 25 and 27-31 are pending and under examination.

Response to Arguments

Claim Rejections - 35 USC § 102

The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Schnell et al. is **withdrawn** pursuant applicant's amendments.

Rejections Maintained

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

The rejection of claim 1, 5, 13, 17, 19-21, 25 and 27-28 under 35 U.S.C. 102(a) as being anticipated by Kahn et al. **is maintained**. Applicant's arguments filed March 13, 2007 have been fully considered but they are not persuasive. Applicant believes that the amendments to the claims have overcome the prior art rejection. Applicant argues "Khan teaches that the surface of

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the particles must be a mixture of native VSV G and RSV G and F and that if VSV G is not provided, the particle will be non-infective". Kahn teaches nonpropagating VSV's expressing RSV glycoproteins and lack the VSV G gene (page 11080, 1st column, 2nd paragraph). Kahn also teaches that in the resulting VSVΔG plasmids, the RSV glycoprotein genes replace the VSV G gene (page 11080, 1st column, 4th paragraph). Kahn teaches the VSV G gene was deleted from the full-length cDNA VSV genomic plasmids containing the RSV G or RSV F gene such that the RSV genes replaced the VSV G in the viral genome (page 11081, 2nd column, 1st paragraph). Examiner disagrees that Kahn teaches that it must be a mixture of VSV G and RSV G at the surface of the particle because Kahn teaches the recombinant VSV expressing RSV G or RSV F displayed the RSV glycoproteins on their surface (page 11081, 1st column, last paragraph). Applicant also argues that "the application as filed, the particle must be propagating in order to generate a protective immune response". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., propagating virus) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of claims 1-3, 5, 13-15, 17, 19-23, and 25-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al. as applied to claims 1, 5, 13, 17, 19-21, 25 and 27-28 above, and further in view of Takada et al. **is maintained** for claims 1-3, 5, 13-15, 17, 19-23, 25 and 27-28 and new claims 29-31. Applicant's arguments have been fully considered but they are not persuasive. Applicant believes that the instant invention has been distinguished from Khan in view of the amendments to the claims. The arguments over Kahn have been discussed *supra*. Applicant argues that Takada "teaches a viral genome wherein the VSV G protein has been substituted with green fluorescent protein and wherein Ebola G protein has been provided in *trans*. Applicant also argues "while the resulting particle is infective once, it would not be propagating as there is no functional G protein as the viral genome contains green fluorescent protein". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., infective and propagating) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Hurt whose telephone number is 571-272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt
May 1, 2007



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